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and Furukawa Electric North America APD, Inc.*

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re: DELPHI CORPORATION, <i>et. al.</i>,	: Chapter 11
	:
Debtors.	: Case No. 05-44481 (RDD)
	:
	: (Jointly Administered)
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**LIMITED RESPONSE AND RESERVATION OF
RIGHTS OF FURUKAWA ELECTRIC NORTH AMERICA APD, INC.
TO DEBTORS' JULY 2, 2009 NOTICE OF FILING OF PLAN EXHIBITS
WITH RESPECT TO FIRST AMENDED JOINT PLAN OF REORGANIZATION
OF DELPHI CORPORATION AND CERTAIN AFFILIATES, DEBTORS
AND DEBTORS-IN-POSSESSION (AS MODIFIED)**

COMES NOW Furukawa Electric Company, Ltd. ("Furukawa Ltd.") and Furukawa Electric North America APD, Inc. ("American Furukawa" and together with Furukawa Ltd., collectively "Furukawa"), by and through their undersigned counsel, and hereby files this Limited Response and Reservation of Rights (the "Response") to Exhibit 8.1(a) of the Debtors' *July 2, 2009 Notice of Filing of Plan Exhibits With Respect to First Amended Joint Plan of Reorganization of Delphi Corporation and Certain Affiliates, Debtors, and Debtors-in-Possession (As Modified)* [Docket No. 17557] (the "Notice of Filing"). In support of the Response, Furukawa respectfully shows as follows:

LIMITED RESPONSE AND RESERVATION OF RIGHTS

1. Furukawa and certain of the above-captioned debtors (the “Debtors”) are parties to, among other contracts, that certain:

- a. Tacoma-Corolla Consulting and Technical Support Agreement, dated June 28, 2008, between Delphi Automotive Systems, LLC (“DASLLC”) and Furukawa Ltd. (the “Consulting Agreement”); and
- b. Intellectual Property License, Restricted Use, and Technical Assistance Agreement, dated December 8, 2004, between and among Delphi Technologies, Inc., DASLLC, Furukawa Ltd., and Delphi Furukawa Wiring Systems LLC (the “Joint Venture License Agreement”).

2. On July 2, 2009, in the Notice of Filing, the Debtors gave notice of their intent to reject the Consulting Agreement and the Joint Venture License Agreement.

Consulting Agreement

3. Pursuant to the Consulting Agreement, Furukawa provided certain technical assistance to the Debtors, including, without limitation certain proprietary information related to the manufacture of electrical and electronic distribution systems for the Toyota Corolla and Tacoma for use during the term of the Consulting Agreement.

See Consulting Agreement §§ 8.4, 16.7(c).

4. In providing notice of their intent to reject the Consulting Agreement, the Debtors have failed to account for Furukawa’s proprietary information, confirm that it will, in accordance with the terms of the Consulting Agreement, cease using Furukawa’s protected information upon termination, or recognize that the Consulting Agreement is one of several related contracts that govern the Debtors’ ability to use Furukawa’s proprietary and protected information and technology.

5. Accordingly, Furukawa files this Response to note that on the effective date of the Debtors' rejection, the Debtors rights, if any, under the Consulting Agreement shall cease, and Furukawa reserves any and all rights it may have against the Debtors if it discovers that the Debtors improperly use its proprietary information post-rejection.

Joint Venture License Agreement

6. Pursuant to the Joint Venture License Agreement, Delphi Technologies, Inc. ("DTI") granted Delphi Furukawa Wiring Systems LLC ("DF Wiring") a nonexclusive, royalty bearing license to use the Delphi Background Intellectual Property (as defined in the Joint Venture License Agreement). Similarly, Furukawa Ltd. granted DF Wiring a nonexclusive, royalty bearing license to use the Furukawa-Japan Background Intellectual Property (as defined in the Joint Venture License Agreement).

7. DF Wiring then granted to Delphi and Furukawa Ltd. a perpetual, worldwide, paid-up, nonexclusive license to use the Company Intellectual Property (as defined in the Joint Venture License Agreement) and the right to sublicense the Company Intellectual Property to any third party for any purpose not in pursuit of the Company's Business (as defined in the Joint Venture License Agreement).

8. In providing notice of its intent to reject the Joint Venture License Agreement, the Debtors have failed to provide any information concerning the Company Intellectual Property, the Furukawa-Japan Background Intellectual Property, or Furukawa's commercial proprietary information. Specifically, the Debtors have failed to confirm that it will cease using such information and keep it confidential in accordance with the terms of the Joint Venture License Agreement. *See* Joint Venture License Agreement § 8.4. Upon the Debtors' rejection of the Joint Venture License Agreement, the Debtors' rights to the Furukawa-Japan Background Intellectual Property or the

Company Intellectual Property are terminated. Moreover, by rejecting the Joint Venture License Agreement, and/or any other contracts relating to DF Wiring's rights to Delphi's intellectual property, the Debtors may likely prevent DF Wiring from continuing normal operations and achieving its business purpose.

9. Through this Response, Furukawa hereby preserves all its rights to retain any grant by the Debtors of Intellectual Property, including the Delphi Background Intellectual Property, to Furukawa or DF Wiring pursuant to 11 U.S.C. § 365(n).

10. To the extent Furukawa or DF Wiring elects to retain its rights in the Joint Venture License Agreement under 11 U.S.C. § 365(n), the Debtors are required to allow Furukawa and/or DF Wiring to exercise its rights under the license, and the Debtors shall not interfere with the rights of Furukawa or DF Wiring as licensees. Such rights shall continue for the duration of the Joint Venture License Agreement and for any period for which it may be extended under applicable nonbankruptcy law. *See* 11 U.S.C. § 365(n)(1)(B)(i)-(ii).

July 13, 2009 Notice of Filing

11. On July 13, 2009, the Debtors filed their *July 13, 2009 Notice of Filing of Certain Corrected Notices of Assumption and Assignment With Respect to Certain Executory Contracts or Unexpired Leases to be Assumed and Assigned to Parnassus Holdings II, LLC Under Modified Plan of Reorganization* [Docket No. 18169] (the "Corrected Assumption Notice"). Despite their Notice of Filing, in which the Debtors seek to reject the Consulting Agreement and the Joint Venture License Agreement, in the Corrected Assumption Notice, the Debtors state that they intend to assume and assign "All contracts between Furukawa Electric Co. Ltd [and Furukawa Electric North America Co. Ltd.] and Delphi related to intellectual property." Because the Corrected Assumption

Notice contradicts the Debtors' Notice of Filing, Furukawa is uncertain as to the Debtors' intentions regarding the Consulting Agreement and the Joint Venture License Agreement because both of those agreements "relate to" intellectual property. If the Debtors intend to assume the Consulting Agreement and the Joint Venture License Agreement, they must assume those agreements *cum onere*. See *In re Flemming Co., Inc.*, 499 F.3d 300, 308 (3d Cir. 2007) (stating that debtors cannot blow hot and cold but must accept the contract *cum onere*, meaning with all the contract's benefits and burdens).

12. The Debtors have failed to provide Furukawa with sufficient information so it can determine the specific "intellectual property" contracts the Debtors seek to assume and assign. Because the Debtors' description is patently ambiguous, Furukawa cannot determine whether the proposed cure amounts listed in the Corrected Assumption Notice are accurate.

13. Similarly, it is imperative that this Court require the Debtors to provide details regarding the date and nature of each intellectual property contract they allegedly desire to assume and assign under the Corrected Assumption Notice. Without more specific information, Furukawa has insufficient notice as to the Debtors intent regarding its intellectual property contracts. After the Debtors supplement their Corrected Assumption Notice with more specific information, Furukawa will be in a position to determine whether (a) it has an objection to the assumption and assignment and (b) the cure amount is accurate.

14. Furukawa hereby expressly reserves its right to appear and be heard regarding the disposition of the Consulting Agreement, the Joint Venture License Agreement, any other contracts, and any other matter relating to the Notice of Filing or Corrected Assumption Notice.

15. Furukawa respectfully requests that this Court waive the requirement contained in Rule 9013(b) of the Local Bankruptcy Rules for the Southern District of New York, that a separate memorandum of law be submitted because the issues raised in this limited objection are not novel. To the extent this Court determines that a memorandum of law is required, Furukawa requests that it be allowed to submit one at a date to be determined by the Court.

Respectfully submitted, this 15th day of July, 2009.

ALSTON & BIRD LLP

/s/ David A. Wender

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